

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

Shawn E. Wallace,

Plaintiff,

v.

United States of America,

Defendant.

COMPLAINT

Civil Action No. 1:10-cv-23
(GLS/RFT)

Plaintiff alleges the following:

1. This is a suit arising under the Internal Revenue Service Code of 1986, as amended (26 U.S.C. §§ *et seq.*) for the recovery of Federal income taxes paid by Plaintiff, Shawn E. Wallace, for calendar year 2003.

JURISDICTION: VENUE

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1346(a)(1).
3. Venue is appropriate under 28 U.S.C. § 1402(a)(1).

PARTIES

4. Plaintiff, Shawn E. Wallace, is a citizen of the United States who presently resides in Albany, NY 12209.
5. Defendant is the United States of America.

COUNT I (Calendar Year 2003)

6. Plaintiff timely filed his Federal income tax return (Form 1040) for calendar year 2003 on or about April 15, 2004 with the Internal Revenue Service Regional Service Center in Andover, Massachusetts. The name, address and social security number of Plaintiff, as they appeared on such return, were as follows:

Shawn E. Wallace
Albany, NY 1220
SSN: XXX-XXXX-5936

7. On his 2003 return, Plaintiff claimed an Earned Income Credit ("EIC") pursuant to 26 U.S.C. §32, of \$4,204.
8. During 2004, Plaintiff received a Notice of Income Tax Examination Changes from the Internal Revenue Service, which notice proposed to disallow the Plaintiff's EIC. Plaintiff has never received a refund of the \$4,204 earned income credit claimed for 2003. Plaintiff filed a claim for a refund of said funds in 2007.
9. Plaintiff qualifies for the EIC because Plaintiff is an "eligible individual," as defined in 26 U.S.C. § 32(c)(1)(A)(i). Each of his two sons, TW (d.o.b. X-XX-1999) and KW (d.o.b. X-XX-2000), is a "qualifying child," as defined in 26 U.S.C. §32(c)(3).
10. TW and KW are both are the plaintiff's sons under the age nineteen, and were permanent residents of the same principal place of abode as Plaintiff throughout the tax year 2003.
11. A notice of disallowance letter of Plaintiff's request for a refund of the EIC was issued by the IRS on January 11, 2008 for the tax year in question. Plaintiff may begin this suit under 26 U.S.C. § 7422(a), pursuant to 26 U.S.C. §6532(a)(1).

BURDEN OF PROOF

12. Plaintiff has complied with the requirements set forth in 26 U.S.C. §§ 7491(a)(2)(A) and (B). Accordingly, if Plaintiff introduces credible evidence with respect to any factual issue relevant to ascertaining his income tax liability for his taxable year 2003, the Secretary of the Treasury shall have the burden of proof with respect to such issue.

JURY DEMAND

13. Plaintiff hereby demands a jury on all issues triable by a jury.

WHEREFORE, Plaintiff prays for judgment against the defendant in the amount of \$4,204: the sum of the 2003 EIC wrongfully withheld from plaintiff, or such amount as Plaintiff may be entitled to, together with costs and interest as allowed by law, and for any other relief as the Court may deem appropriate.

Respectfully submitted,



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Dated: January 7, 2010